K. England. Edward VI King &c 1800

THOUGHTS

ON

THE REPEAL OF THE STATUTE

MADE

IN THE FIFTH AND SIXTH YEARS OF THE REIGN OF KING EDWARD VI.

WITH

SOME OBSERVATIONS

ON THE RESPECT DUE

TO

THE AUTHORITY OF JUDGES,

AND TO

THE VERDICT OF A JURY.

BY A COUNTRY MAGISTRATE.

"SNATCH FROM HIS HAND THE BALANCE AND THE ROD;
"REJUDGE HIS JUSTICE; BE THE GOD OF GOD."

POPE.

LONDON:

PUBLISHED BY J. HATCHARD, NO. 173, PICCADILLY;
AND SOLD, ALSO, BY R. BICKERSTAFF, STRAND.

PRINTED BY J. BATESON, DENMARK-STREET.

1800.

2 04

BRITISH MUSEUM

44.
3. 29.
481.

TO

SIR WILLIAM HENRY ASHHURST, KNT.

Late One of His Majesty's Justices

OF

THE COURT OF KING'S BENCH.

SIR,

THE Author of the annexed pages is personally, he might almost say, wholly unknown to you: but the Converse would be very far from the truth.

He dedicates this Trifle to you, Sir, without having previously solicited your permission, upon an established principle of the Common Law—"That

it is the Birth-right of an Engliſhman to tender the Tribute of his Reſpect to Worth, whenever or wherever he may chance to find it."

He has the honor to be, with the greateſt ſincerity and truth,

SIR,

Your moſt faithful,

Moſt devoted,

and obedient Servant,

A COUNTRY MAGISTRATE.

December 10, 1800.

THOUGHTS,

&c. &c. &c.

THE great and leading principles of the common Law of England have been treaſured up in the hearts of a grateful nation, amidſt all the viciſſitudes of human affairs, all the changes of religion, and the convulſions of Government, with a certain veneration and care that have baffled the effects of time.

If any part of this ſyſtem had been founded on the prejudice of a moment, its duration would have been commenſurate only with the cauſe which gave birth to it, and, like the common bubbles of the day, it would have appeared only to vaniſh. The thing, which is "the SAME, *yeſterday*, *to-day*, and "*for ever!*" muſt derive its ſource, at leaſt, from ſome GREAT ORIGINAL.

To illuſtrate this:—That principle of the common Law, which prohibits "Combination", can never be annihilated while Man continues what he is and Nature herſelf exiſts. "Two to one—foul

play" is a maxim implanted in the breaſt of an infant as ſtrongly as in that of a Judge; no laws can over-rule it, no power can efface it.

Again:—That "Reverence is due to authority" was a principle acknowledged in the patriarchal ages as fully as in our own times, and adopted alike by the Pagan and the Chriſtian world. The adoption, indeed, of principles (even without examination) immemorially handed down to us, can ſcarcely be called a prejudice; ſince nothing, without intrinſic excellence, could thus be perpetuated.

But, as the rough draughts of a great maſter may have furniſhed materials for artiſts in ſucceſſive ages, and each may have ſelected parts beſt ſuited to his own genius, the demand of his native country, or the general taſte of the times in which he lived; ſo it is with the common Law of England. Its features may have been ſometimes enlarged, and ſometimes contracted; but the great original outline has ſurvived, while the copies have been deſtroyed or forgotten.

An error, as I think, of ſome importance, ſeems to have taken conſiderable hold of the public mind, viz. that the ſtatute of the 5th and 6th of Edw. VI. c. 14. which relates to Foreſtallers, Regrators, and Engroſſers, was merely declaratory of the common Law; and that, by its repeal, the prece-

dent immemorial reſtrictions on trade were at an end.

A very ſlight inveſtigation of the ſubject will ſhew, that ſuch an opinion is extremely ill founded. To buy corn, fiſh, or butter, in any market, with the intent to ſell the ſame again, was at common Law no offence. The huckſter, or the Regrator, in theſe and in every other article, was a legal trader, recognized both by prior and ſubſequent ſtatutes, and ſubject only to the control of not ſelling them again the ſame day in the ſame market. This, among other ſtatutes, was in reſtraint of the common Law, whoſe great aim was to encourage the freedom of barter under the wiſeſt of all political regulations. A new offence was, in fact, created with a new name; and what before was *legal regrating*, became *criminal engroſſing*.

It is evident, alſo, that this ſtatute was intended as a temporary expedient, not only from the hiſtory of that period and the various exceptions which the legiſlature was obliged to introduce into it, but from the conſideration, that Engroſſing itſelf, under certain limitations, was permitted. In the reign of Charles II. theſe limitations were repealed, and others, more applicable to the times, ſucceeded them. Soon after the Revolution, the credit of it was ſhaken by the opinion of Lord Chief Juſtice Holt; and in the beginning of the preſent reign, this code of trade law

was, with ſome few exceptions, wholly aboliſhed.—Peace to its manes! *De mortuis nil niſi bonum.*

In the firſt inſtitution of markets, their common wants induced a ſtraggling neighbourhood to meet, as occaſion required, for the exchange of their mutual acquiſitions. No rules regulated the aſſembly: for, in this infant ſtate of commerce, refinement had not given riſe to ſpeculation or capital to monopoly. But, with the increaſe of of civil ſociety, mutual wants naturally increaſed; and the market acquired both ſtability and importance. The place of meeting at length became a village, and the village increaſed into a town. The common medium of money ſoon followed.

Hence the town became the place of general reſort, and the market held out her balance to fix the price of things. The common Law now wiſely ordered, that Plenty or Scarcity ſhould be aſcertained by this criterion; that the buyer and ſeller ſhould meet here; and that their bargains ſhould be *in celebri plebis concurſu, et hominum oculis.*

While trade continued thus public and unfettered, it is obvious that Price muſt have been in the direct proportion of Conſumption or effectual demand, and in the reciprocal proportion of the Produce required: ſo that, when the Conſumption is given, Price and Produce will be inverſely as each

other. The market could accurately ſettle this Price by weighing them in her oppoſite ſcales. But if weights were ſurreptitiouſly introduced on either ſide; if Produce was intercepted, or a fictitious Demand created by the anticipation of it after its arrival—in either of theſe caſes the market would no longer have been the true teſt of Scarcity and Plenty: and, as no other ſtandard exiſted to which they could be referred, commercial diſorder muſt inevitably have enſued. The common Law, therefore, again judiciouſly interpoſed, and prohibited the act of *foreſtalling* Produce in its paſſage to this ſtandard.

The ſame preſiding genius of the country watched over it on its arrival there; and, as the anticipation of Produce for the purpoſe of ſale in the ſame market muſt naturally have cauſed the ſcale of Demand to preponderate by the introduction of a falſe weight, and have given a fictitious tone to the market, it wiſely prohibited, alſo, this public fraud, or what has now aſſumed the name of "Uſeful ſpeculation." The law, however, did not reſtrain the Regrator in his *future* traffic; it preſcribed only, that he ſhould not blow hot and cold in the ſame market.

If theſe offences had been tolerated, it is evident that the great end of markets would have been defeated. Good faith and confidence is the ſoul of commerce. But could Confidence have exiſted between any contracting parties (in themſelves, how-

ever, honourable) where the ſubject matter of convention was likely to be weighed with falſe weights, and where it was uncertain whether the buyer or the ſeller would be eventually defrauded? All here muſt have been falſe, hollow, and ſuſpected. Price would have depended on no rule, and markets would have been the channels of deception.

It may be urged, indeed, that ſuch reſtrictions might be adapted well enough to Commerce in her infant ſtate; but that, as ſhe approached to maturity, ſhe diſdained the leading-ſtring and the go-cart. I am no merchant; and I mean neither to controvert or aſſent to all the commercial dogmas of the day. But I am free to confeſs, that I have neither read nor heard any argument which has induced me to conſider theſe two principles, at leaſt, of the common Law as inapplicable to her either in her infancy, her maturity, or her decline. Plain dealing and truth muſt ever ultimately operate to the public good. Partial and temporary advantages may accrue to individuals by a deviation from rectitude. National commerce can flouriſh alone by an adherence to ſtrict and eſtabliſhed rules of juſtice: Its object is the relief of mutual wants, on the principle of mutual advantages. To give it vigour, therefore, it is eſſential to prove, by ſome fair teſt, that this mutuality exiſts: and hence the vigilance of the common Law to ſecure the "Purity of the market."

The regrator, as I have before obſerved, was no more a criminal than the butcher or the cheeſe-monger. It was the illegal exerciſe of a legal profeſſion that alone conſtituted an offence. The term "Engroſſer" was wholly unknown to the common Law of England: but there was one of much more general import and tendency univerſally recognized, viz. the "Monopoliſt." For to engroſs is not the ſame thing as to monopolize, Thus, a trader might engroſs corn, when it was under a certain price: but, at the ſame time, it was an offence to monopolize it.

By a third principle of the common Law, therefore, all Monopolies are prohibited.

The learned reader (if any ſuch ſhould honor theſe pages by a peruſal of them) will readily perceive that I am not here ſpeaking of monopolies by grant or by charter, but of monopolies in the more extended ſignification and meaning of the word.

The giſt of this offence is purchaſe in groſs, with the intent of reſale at an unreaſonable price. To decide what is purchaſe in groſs, and what the intent of the purchaſer, is the immediate province of a jury, and can only be determined by circumſtances; ſuch as *e. g.* "The nature of a man's general dealings as applicable to the particular caſe:"—For it is obvious that what may be monopoly in a trader at Stam-

ford, is not neceſſarily ſuch in a merchant of London. "The time and probable conſequence of his purchaſes:"—As when a man anticipates and blocks up the avenues of a particular trade, under a well-grounded idea of the approaching ſcarcity of any article, ſuch for example, as Whalebone: "His manner of doing it:" "The quantum of the commodity monopolized." And this is again to be eſtimated by circumſtances, as, "Whether he acted with, or without combination?" Theſe, and a great variety of other matters, are ingredients to conſtitute the offence of monopoly: but a jury will have no greater difficulty in drawing a concluſion from facts, ſo proved, than in any other caſe of complicated crime, ſuch as treaſon or common conſpiracy.

Great pains are taken to impreſs the public mind with an idea, that, in the preſent improved ſtate of Trade in this Nation, a Monopoly in the great articles of Conſumption is impoſſible; and that a Combination, even among an hundred and fifty Millers and Fiſhmongers, can hardly exiſt. Perhaps ſo:—but I have heard of a Combination of twenty thouſand journeymen ſhoemakers, from the man who earned 12*s.* to the man who earned thirty ſhillings per week; all conſpiring together, and acting with one ſoul, for a common object, founded on a common intereſt. This, it may be ſaid, is not a ſimilar caſe, and, at the beſt, it is but hearſay. Well, then! I have myſelf known five hundred perſons, at leaſt, oppreſſively, in-

juriouſly, and illegally aſſociated, and acting in concert together, for the purpoſe of conſuming neither cheeſe, butter, or milk, in their reſpective families, till they could get thoſe articles at a fixed, *i. e.* at their own Price. This I conceive to be an offence againſt the Law; and ſure I am, that the fact will be readily admitted.

The only thing I wiſh granted, is, the Poſſibility of ſuch a Combination. If it can exiſt, let me aſk, whether a proper corrective can be injurious to any principle of fair trade, or commercial mutuality? If, indeed, there is no ſuch thing as poiſon in a country, an antidote will be uſeleſs, and the preſcription of the phyſician a dead letter. But, ſurely, common prudence will direct us not to throw away the Recipe, while the fact is doubtful.

Now, that ſuch a Combination may exiſt, is an opinion fully ſanctioned by an ingenious Author, whom I ſhall have occaſion hereafter to introduce to the reader by the name of "A Country Gentleman;" and who, by labouring under the preſſure of too much Mark-Lane information, has improvidently let through him a little more than his employers either wiſhed or intended.

In page 65 of his voluminous work, among the various obſtacles which are to oppoſe the future progreſs of the Bread and Flour Company, he ſtates the

following, viz. " The almoſt *certain Combination* which they will run the danger of exciting againſt them from the *whole Trade*, who will watch their proceedings with a jealous eye."

Again, in page 66, " The Company may, for a time, abridge the Miller of ſome little of his Profits; it may, even, deprive him of a few of his Cuſtomers, —but theſe will be very few, for they are all, of courſe, labouring under the ſame opprobrium as the Millers: *with them they make a common cauſe*; and is it probable they will be allured, *by an inconſiderable advantage, to deſert their old Friends?*"—Can language be plainer?

Human ingenuity is fond of paradox; and it is particularly flattering for a young man to diſcuſs points, which are removed from vulgar apprehenſion and common ſenſe. To be able to ſolve a political or commercial enigma, is a ſign that he is verſed in faſhionable literature; and when, on leaving the country, Doctor Adam Smith was earneſtly recommended by a young man of taſte, juſt launched from the univerſity, in preference to black lettered Science and Coke upon Littleton.

From ſome ſuch motives of vanity, or, perhaps, from a worſe ſource, ariſes the poſition " That, in times of ſcarcity, Monopoly is beneficial to a Country." At firſt the mind revolts at it; but, after having heard it two or three times ingeniouſly diſcuſſed,

and inſtances adduced where it has eked out a commodity, equalized conſumption, and eventually counteracted greater evils, we become more habituated to it: like Sin, it becomes leſs frightful by being more familiar; and, at length, we embrace a doctrine which we are unable to underſtand. Let us, then, examine this poſition.

As I before obſerved, when the Conſumption is given, Price will be in the inverſe ratio of Produce.* Let us ſuppoſe that there is a Deficit of *one-fourth* of the average Produce, in any great article of Conſumption, *e. g.* Salt. Now, Price, which was in the inverſe ratio of Produce, will be in the direct ratio of this Deficit; *i. e.* the greater the Deficit, the higher will be the Price, when the Conſumption is given. I mean to argue in round numbers, and without arithmetical preciſion.

The fair advance in Price, therefore, of this Article, will be ſomewhere about *five-and-twenty* per cent. as ſettled by the ſcales of the market; *i. e. five and-twenty* per cent. above the average Price, will be the true meaſure of its Scarcity.

Let us now ſuppoſe, that one other *fourth* of the average Produce is monopolized at this Market-Price: the remaining *half*, therefore, of an average Produce, will alone flow into the Market, to ſupply

* Vide page 4.

the effectual demand ;—and by a parity of reaſoning, as above, the fictitious meaſure of Scarcity now will be ſomewhere about *fifty* per cent.

Now, if this advance in Price could be made to act preciſely as a Prohibition, *pro tanto*, in the uſe of the Commodity, and to cauſe a proportionally leſs Conſumption of it in a given time, ſo that in every correſponding period the Total of Conſumption ſhould only be half what it was before ; in this caſe, the extreme of Scarcity could never be felt. The Commodity, thus huſbanded, would laſt through the uſual time, and the Monopoliſt could never gain even this advance of *fifty* per cent. being the Price of his own creation, by the introduction of his property into the market ; for, by ſuch introduction, a leſs price than *fifty* per cent. would evidently become the meaſure of Scarcity. Others, therefore, would have reaped the Maximum of benefit from his monopoly ; and, at the end of the time, he would find, that the ſtock monopolized would have produced very nearly what he gave for it, or eventually leſs.

On what ground, then, was the ſpeculation founded ? I anſwer, on experience, and the nature of things. In the main articles of life, no Laws can thus accurately abridge the Conſumption.* It is a matter, indeed,

* Government has acted moſt judiciouſly on this occaſion. They have endeavoured to attain this deſirable object, as far as it is attainable ; not by wild and coercive experiment, but by the gra-

of extreme difficulty to limit it at all. If Wheat were to advance from 10*l.* to 20*l.* a load, can it reaſonably be ſuppoſed, that, under any proviſions or reſtrictions, the conſumption in a given time would only be half what it was before? For the attainment of this article, mankind would—they muſt—retrench in every ſuperfluous article of expenditure; and hence it happens, that the half of an average produce of any ſuch articles will be at an end very nearly as ſoon as if no Scarcity had happened. Sufficient for the day would be the evil thereof.

At this period of time, then, the monopolist comes forward; he gradually feeds the Market, and claims the merit of averting that diſtreſs, of which he himſelf is, in ſome degree, the author. If he now only gets *a hundred* per cent. more than prime coſt, he is praiſed as a Benefactor, and (to uſe the cant *a-la-mode*) deſerving of public reward for meritorious ſervices.

Now, if the above reaſoning is founded, by ſuch Monopoly he has raiſed the meaſure of Scarcity in the firſt period of time to *fifty* per Cent. on one half of an average Produce; and in the latter he has raiſed it to *a hundred and twenty-five* per Cent. on one fourth of the ſame; when, by the exceſs of Conſumption above Produce, *five and twenty* per Cent. was the true meaſure.

cious recommendation of the Sovereign—the power of example—the encouragement of importation—the introduction of ſubſtitutes,—and regulations of parochial relief.

But it may be ſaid—There is a period, then, when, without Monopoly, and according to your own reaſoning, the Market would have been without a ſupply. I anſwer, that, if the average Produce is preciſely equal to the Conſumption, (which I ought to have laid down as a datum) it will undoubtedly be ſo. But I maintain that it is the peculiar province of Government, by bounties, &c. and not of the Monopoliſt, to prevent this evil.

For the purpoſe of elucidating theſe almoſt ſelf-evident principles, and of refuting the above abſurd propoſition, I have reaſoned on the ſubject as if there was no Importation to affect the home market. Let us now briefly conſider how this Monopoly will affect the Foreign market. The Merchant there, who ought to conſider *five and twenty* per Cent. as the Meaſure of Scarcity here, and to apportion the Price of his Commodity to the real circumſtances of this and the relative ſituation of his own Country, calculates by a fallacious rule; by a rule, advantageous indeed to his nation, but in the ſame proportion injurious to our own. For if the Superfluity of an article there is given, the Price of it, with ſome little variation, ought to be in the proportion of our effectual demand. But the national criterion of this demand has been falſified by a main breach of the municipal Law of the Land.

Such, I conceive, were the wiſe regulations of the Common Law, which related to internal Commerce prior to the Conqueſt. It is not within the limits I pro-

poſe to myſelf, to ſhew under what reſtrictions ſhe laboured at that period; what additional fetters were impoſed on her, under ſucceſſive Kings;—what ſpecial commiſſions of inquiry iſſued;—or how ſhe was reſtored, as I conceive, to her former ſtate, in the preſent Reign.

Having thus ſhortly commented on theſe three principles of the Common Law, I ſhall now proceed to make a few remarks on the Statute of the 4th and 5th of Edward VI. c. 14. as it affected Trade in the great article of Corn. And here I admit, without heſitation, that I cannot underſtand the policy of its Proviſions; nor can I bring my mind to think, that the prohibition of what is there called Engroſſing, could ever have been applicable to any time or ſtate of Commerce. Under ſimilar reſtrictions, (if enforced) it is ſcarcely poſſible to conceive how Trade, in that article, could have been carried on. If Corn could alone have been obtained by barter between the Grower and Conſumer, ſuch a metropolis as London could never have been ſupplied when the Price was above the ſtandard of the Statute.

This certainly was not exactly the caſe, as I underſtand. The Baker was privileged, and the Miller, by expending additional labour on this article of conſumption, was ſo far conſidered to change its ſtate, as not to render himſelf, by re-ſale, obnoxious to the penalties of that Statute *; but, by thus confining it

* This opinion has been doubted; and there are caſes certainly againſt it. But, after the Revolution, when the opinion of the

to ſo narrow a Channel, the Grower and Conſumer were equally injured; and the principle of Price, as recognized by the Common Law of England, was in practice turned topſy-turvy.

In the reign of Charles the Second, Neceſſity, ariſing probably among other cauſes from the depreciation of Money, pointed out the impolicy of theſe reſtrictions: but, as the principle had been continued down for above a century, and this *prava conſuetudo* had by time, as it were, become inveterate, the Legiſlature adopted a half way meaſure, and obviated the difficulty for a time, by the temporary expedient of raiſing the Meaſure of the Standard.

To reduce things to their ancient footing, was the obvious intention of the Legiſlature in the year 1772; when, by one bold and maſterly ſtroke, all that crude and undigeſted code of Trade Law, which had been erected on crazy foundations, was done away; and the Common Law was rouſed from its ſlumber to invigorate Commerce.

I ſay this, however, with very great diffidence; ſince Dr. Adam Smith, in his Digreſſion concerning the Corn Trade, aſſerts that the Statute of the twelfth of the preſent King did not repeal the reſtrictions of the fifteenth of Charles the Second, but

then Lord Chief Juſtice was pretty well known, I apprehend the queſtion was never brought forward.

that it *left them in full force.* I conſider ſuch authority as inferior only to the deciſion of a Court of Law or the verdict of a Jury. His opinion ſtaggers me. It is ſome time ſince I read his work on the Wealth of Nations; and a late reference to it has made me entertain a doubt, where none had previouſly exiſted in my mind.

The Statute of Charles, as I obſerved, raiſes the Standard; and, under the limitations therein preſcribed, the Engroſſer of Corn is permitted to ſell it again, *without incurring any penalty*, any Law Statute, or uſage, &c, &c.

That the reſtrictions of Charles were not *expreſly repealed* by the twelfth of Geo. III. is perfectly clear; but, if they *continued in force* after that Act, may I be permitted to aſk, what Penalty was incurred by the violation of them?

While the Statute of the 5th and 6th of Edward VI. exiſted, and that of Charles had concurrent force *in pari materiâ*, the Penalty, by reference to the former, MIGHT poſſibly have been adjudged common to both.

But, in penal caſes, is it uſual, or permitted, to hunt back into Statutes, that have been repealed, for the purpoſe of Forfeiture? I feel myſelf totally incompetent to anſwer this queſtion; and

therefore requeſt a moment's indulgence, whiſe I ſtate how I think an attentive Magiſtrate would feel it his duty to act, if a ſimilar caſe came before him.

I think, that, without ſome authority to direct his legal judgment, he could ſcarcely proceed to conviction. He muſt have ſtrong doubts in his mind: and, in that event, the line of his duty is clearly pointed out to him. But if the parties were of ſufficient ability, and were mutually deſirous that the opinion of the great Criminal Court of the Nation ſhould be taken on a ſubject of ſuch national importance, I think he would gladly embrace the opportunity of making himſelf the paſſive inſtrument of public utility, in order that his proceedings might be removed by Certiorari.

If this be a decided Caſe, I entreat the reader's forgiveneſs, under a thorough perſuaſion that I ſhall obtain it by this full confeſſion of my ignorance. That Mr. Burke conſidered all the clauſes againſt engroſſing contained in the whole ſyſtem of Trade Law to be *virtually and effectually repealed*, is clear from the very nature and character of the man. For would his vigorous and comprehenſive mind, which ranged over the paſt, arreſted the preſent, and dived into the future, bringing them, like the radii of a circle, to one center, have contented itſelf in the purſuit of this great national object, with freeing

Commerce from only half her chains, and ſtill leaving her in bondage! He, no doubt, was convinced that he had reſtored her to her primeval ſtate, not to vagrant and licentious liberty, but to rational, legal, and well-conſtituted Freedom.

As little can it be conceived, that the man, who purſued Science to her inmoſt receſſes, where ſhe unfolded to him the Common Law of England, or, what is the ſame thing, the blended Laws of Religion and of Nature, emboſſed in everlaſting characters of Gold and Adamant; as little can it be conceived that he could have been ignorant of the concurrent juriſdiction which the Common Law, though dormant, held over the regions of Commerce. That judicious Reformer well knew how to cut out the canker without injuring the tree: a leſs able politician might, perhaps, have gone greater lengths; he knew where to ſtop. Happy! thrice happy would it have been for a neighbouring nation, if, in the neceſſary correction of inevitable abuſes, his wiſdom, his integrity, and his moderation, had directed her Councils!

* * * * *

HAVING laid down ſome principles, and ſubmitted ſome opinions, in the former part of this Treatiſe, of whoſe truth I, at leaſt, have no reaſon to doubt, ſince their roots have expanded themſelves in my mind by reflection and time, "which I could *well* ſpare" from the ordinary avocations of life; I ſhall now proceed to examine the duty of a Magiſtrate, under certain ſpecial and extraordinary circumſtances of a Nation; and the deference and protection to which, in every well-regulated State, he is entitled, in the due and conſcientious diſcharge of it.

A change of national circumſtances and manners will neceſſarily produce a change in national offences. Crimes of a particular caſt will prevail to-day, while thoſe of a very different deſcription will uſurp their place to-morrow. It is the more than ordinary duty of the higher orders of the Magiſtracy, to preſide, with careful anxiety, over the uſages of the people; to watch even their *legal* propenſities; and to mark HOW and WHEN they degenerate into crime.

When they either receive private information,

have themſelves a well-grounded ſuſpicion, or are inſtructed, by the public voice, that any particular offences take the lead in ſociety, which are likely to be carried to exceſs, and to endanger the public peace or the general welfare;—in every caſe of this kind, the Country has a right to expect from them that they will boldly come forward, and command an Inquiry on the ſubject.

The conſtitutional mode of ſuch inquiry is, by a Grand Jury under their directions.—*Eſto perpetua.* A ſimilar line of duty is preſcribed, alſo, to the inferior magiſtrate. Perhaps it is one of the moſt ſacred functions of their mutual office thus to unſheath the ſword of preventive Juſtice. In the diſcharge of it, they are, as I conceive, amenable only to the ſuperintending vigilance of Parliament and their own conſciences. No other exiſting power can touch or control them; and the Law flings round them her more than ſeven-fold ſhield.

To ſpeak irreverently of the Rulers of the people is, by the common Law of England, a great miſdemeanor. But a libel on thoſe who are entruſted with the adminiſtration of public juſtice is a much higher offence againſt the State. It is a kind of aggravated ſcandal, deliberately committed to paper for the purpoſe of circulation and perpetuity; and it tends to deſtroy the cement and fabrick of ſociety, by

breeding, in the people, a contempt of Authority, and an averſion to the Laws.

What, let me aſk, were the prominent features and object of the French Revolution, and what were the means made uſe of by its promoters to effect it? Was not the object diſorder and confuſion?—and the means, an abolition of Prelates in the Church, and Judges in the State? For they well knew, that a throne, without the props of religion and the law, muſt ſoon totter to its fall. Aſk that deluded —that infatuated—people how all theſe ends were effected; and they will tell you by—LIBELS.

As to the propriety of this Law of Libel, or of the principles on which it is founded, I will not offer ſuch an affront to the good ſenſe of my reader as to ſuppoſe that he can entertain a doubt. The only doubt that can ariſe in his mind is as to the application of any particular caſe to that Law and to thoſe principles.

Free inquiry and the liberty of the preſs, rightly underſtood, are the inherent rights of a free people. To examine general principles of legal ſcience, or the opinions of a Judge in point of Law, with that deference which his ſituation demands, can never be a libel. Immemorial uſage and public opinion countenance ſuch diſcuſſion, and the law approves it. True ſcience does not ſhrink from examination,

and true greatneſs is ever ready to acknowledge error. Such inquiry tends to ſtrengthen the powers of Government; it cauſes all its ſprings to act in their proper place; and gives ſpirit and energy to the whole machine.

But if a Publication * ſhould brave the day, whoſe primary object is to inform the people,—That their judges are the dupes of popular clamour; "that the nonſenſe of a polluted metropolis, vomited "forth, and propagated through the country, by "wickedneſs or ignorance, is ſanctioned by thoſe, "whom we are accuſtomed to look up to as "Polar ſtars to direct our judgment." If the author ſhould ſtate, "That the public peace may be "endangered by public PREJUDICE †;" and, by alluſions not to be miſunderſtood, ſhould aſſert, "That ſuch PREJUDICE has found its way even "to their hallowed ſeats; but that high character "and ſtation gives no ſanction to it,"—If he ſhould venture to ſtate, "That the attention of the Grand "Juries, through a circuit, was peculiarly directed "by the Judge to a fixed object; and informa-"tion detailed in a manner which appeared ſome-

* A pamphlet, entitled "An Addreſs to the good Senſe and Candour of the People, in Behalf of the Dealers in Corn, &c. &c. By a Country Gentleman." *Vide* pages 9, 10, 15, 19, 32, 152,

† *i. e.* Judgment formed beforehand, without any examination.

" what in the ſpirit of exultation," for the purpoſe of inciting popular reſentment.—If he ſhould ſtill further venture to ſtate, " That a cauſe tried by the " ſame judge, and what paſſed on that occaſion, was " the Directing-poſt to guide the hand of public " vengeance to a fit object"——to a licence of ſuch magnitude, the common Law of England hardly knew how to annex a name, much leſs how to appropriate a puniſhment. Yet ſuch a publication has braved the day; national pride has been thus outraged; and the public underſtanding thus inſulted—by a perſon, aſſuming to himſelf the honourable appellation of " a Country Gentleman."

To proceed:—As I before obſerved, national manners and circumſtances will, at different periods, introduce different irregularities and vices, with their attendant and congenial crimes.

A nation, for example, by the viſitation of God, and by unproductive ſeaſons, may have been in ſo unnatural a ſtate, that the price of labour bore no proportion to the price of the abſolute neceſſaries of life.—The moſt humane laws might have been enacted to relieve temporary diſtreſs, and to meet (as far as human foreſight could provide) the exigencies of ſuch a Calamity.—It may have ſo happened, alſo, that this neceſſary relief, in ſome degree, operated to increaſe the general ſcarcity.

Now, it is eaſy to conceive, that the high Price of Corn, and of the other articles of Produce, may have amply indemnified men, in a certain line of buſineſs, where the advance in the price of labour kept no proportion to their advanced and increaſing profits;—while a different claſs of the community, not concerned in the articles of Produce, viz. the tradeſman, the artificer, the man of ſmall independent property, the curate, the widow—in ſhort, every one, whoſe condition, education, or pride, raiſed them above the level of thoſe who reſorted to the pariſh for relief;—while all theſe groaned under a two-fold preſſure—the dearneſs of abſolute neceſſaries, and the accumulating load of parochial taxation.

At the ſame time, it might poſſibly have happened, that the public mind had been impreſſed with an ill-founded opinion, that the price of the neceſſaries of life was far beyond the meaſure of Scarcity, and that the ſtreams of trade had been poiſoned at the ſource by commercial ſpeculations, foreſtalling, reſales in the ſame market, and monopolies.

Under ſuch trying circumſtances, and where the public mind had received ſuch a bias, it would ill become me to ſay what line of conduct a Judge of England ought to adopt in his higher ſphere. It is, however, competent for me to ſay what I, under ſuch circumſtances, ſhould expect from a Magiſtrate, who

had obtained, with the concurrence of my ſuffrage, the honourable diſtinction of the Chair in the Court of Quarter Seſſions: —I mean, if his opinion coincided with the principles laid down in the former part of this Tract.

I ſhould expect him, in his charge to the Grand Jury *(omnibus aliis omiſſis)*, to call their attention to this great object of National Concern; to ſtate to them the conſtitutional province of the Court to direct in ſuch caſes, and their duty to inquire under its direction; to explain to them the incalculable advantages that muſt accrue to the community from ſuch legal inquiry at their Tribunal; either by calming the public mind, if it adjudged the public opinion erroneous, on the one hand; or, if founded, by preſentment of the offenders, on the other.

I ſhould expect him boldly to tell them, that, by the ſacred and unwritten Law of England, ſuch were enormous offences againſt the public Œconomy *.

* It is the private opinion of the Author, that no Combination to enhance the price of Corn ever did or can exiſt in the country. But he further ſtates it as his opinion, that, if a Combination ſhould ever exiſt in Mark Lane, the effect to the public will be preciſely the ſame as if there was one general Combination throughout the whole kingdom. For it was ſhewn, in page 13, that the conſumption did not vary inverſely as the price; and although the produce may not be equal to the conſumption of the

And that, as to the Conſequences*, neither He nor They were to regard them: for that, if ſuch ſentiments of apprehenſion were ſuffered to pervade our Courts of Law, Juſtice would ſoon become ſubſervient, either to the will of the Great, or to the madneſs of the People.

But, ſuppoſe now, that our worthy Preſident, in this addreſs to the Grand Jury, ſhould have totally miſtaken both the law and the policy of this ſubject,—what then! Shall he be libelled in ballads; poſted at the corner of every ſtreet; and thus hung up in effigy, for an error in judgment? It may, perhaps, be aſked—What courſe would you take? Would you adviſe the Court, in vindication of its Dignity thus violated in the perſon of its Chairman, to apply for a criminal information againſt this "Country Gentleman?"—Certainly not. In this caſe, there would be ſufficient error apparent upon the face of the record to arreſt the judgment: for, if the whole tenor of this libel was duly ſet out, the Court could not avoid ſeeing, that the defendant was one of thoſe

country, yet, in ſeaſons of average produce, the quantum of importation may be conſidered as given: now, the London market ſettles the price.

* A gibbet is, certainly, a "*memento mori*," or, in the words of the Country Gentleman, "a Directing-poſt;" and it is meant to be ſo. But, in theſe days, it is to be hoped, that the judgment of criminal juſtice is ſeldom influenced, or its execution defeated, by the apprehenſion of what may eventually happen.

privileged members of the Community, who have the power of doing miſchief with impunity.

But, were this otherwiſe: were I perſuaded that it was the production of ſteady intent, and deliberate reaſon—if no other means could be deviſed of checking the career of ſuch a publication, on account of the weight of intereſt and protection that ſupported it; I ſhould then have recourſe to the publiſher, without inquiring for the author.

We have had Libellers, indeed, in this country, poſſeſſed of very conſiderable talents; and who, like the celebrated JUNIUS, have introduced works into the world of literature, ſufficiently brilliant and pernicious to entitle them to the diſtinction of ſuch an application. Compoſed of diſcordant ingredients—the broad Inſult coupled with the degrading Apology, and the high Boaſt of Independence with the ſervile, the fulſome, and exaggerated Compliment, this *Olla podrida* is, in itſelf, diſguſting to the ſimplicity of Engliſh taſte; and will ſcarcely be reliſhed in the latitudes, where Timidity, Raſhneſs, and Folly form the national character of a people *.

He, who firſt tells his Superiors that they are tainted with an Evil which renders them totally diſqualified for the exalted Station they occupy, in the next

* "*Furor arma miniſtrat.*"—VIRG.

breath informs them, "That he ſhould grieve indeed, "to be ſuſpected of a wiſh to tarniſh their well-"earned laurels, or to diminiſh that reverence we all "muſt feel for every individual member of that vene-"rable body. Happy! indeed, is the country (ſays he) "which entruſts to ſuch pure and able hands the ad-"miniſtration of its laws!" &c. &c. If this be Irony, all the parts will be conſiſtent at leaſt; and, on that plea, a lower ſchool-boy at Weſtminſter might, perhaps, have eſcaped the rod—I mean, for his *firſt fault*.

II.—But, if the Deciſions of Judges are thus entitled to our utmoſt deference—in the ſame degree, alſo, are the verdicts of Juries. They are judges of the fact, appointed by the Conſtitution, *i. e.* by Ourſelves. Yet ſtill their concluſions may be erroneous, and, by poſſibility, (although I ought not to preſume that caſe) corrupt. I therefore ſhall ſay nothing of the remedy by attaint.

Now, as the errors of a Judge at *Niſi Prius* may be corrected in various legal ſtages of a cauſe; ſo, alſo, may the errors of a Jury be ſet right by the wiſe inſtitution of awarding new trials.*

A party, who feels himſelf diſſatisfied with a

* However trite and familiar theſe obſervations may appear to profeſſional men, the author has reaſon to fear that even the middling claſſes of ſociety know very little, and that the bulk of mankind know nothing of this invaluable privilege.

verdict, found on the oath of twelve of his neighbours and equals, has ſtill the right of appealing from their deciſion. The Court, to whom he ſtates his grievance, is compoſed of four Judges, all acting under the ſolemnity of an oath. The Judge, who tried the cauſe, may be of the number; but, take the cauſes in the kingdom at large, the Chances are nearly two to one againſt it.

Can the art of human policy oppoſe a ſtronger barrier to Injuſtice?—The Graft of this uſage was inſerted on the Common Law by Juſtice, and cheriſhed by Liberty. What individual, then, ſhall arrogantly preſume to ſet up his private judgment againſt a juriſdiction thus conſtituted! No well-regulated State can permit it; for, if permitted, Contempt would naturally riſe on the ruins of Authority; and ſome new Touchſtone muſt be reſorted to for the diſcovery of Truth. The Common Law of England, therefore, moſt ſtrongly prohibits it.

Two cauſes of immenſe importance to the Public had been tried, in the laſt ſummer; the one, before Lord Chief Juſtice KENYON; the other, before Mr. Juſtice LE BLANC. The Defendants had both been convicted by a Jury of the Country. In the Michaelmas Term, commencing the ſixth day of November laſt, it was competent to either or both of theſe Gentlemen to have moved for New Trials, or

to have ſtated their legal reaſons to the Court for arreſting the judgments.

If they had been diſſatisfied, either with the Direction of the Judge who tried the cauſe, or the Inference drawn by the Jury, under his directions, —it was then, I ſay, competent to them both to have taken the former advantage preſcribed by the Law.

If there was any thing on the record, either to ſhew that they had been convicted of any thing *which, by the law of England, was no offence*; or, if an offence, which was badly charged againſt them; in either caſe, it was competent for them reſpectively to have adopted the latter mode of Redreſs.

Now, in this interval, viz. on the 30th of September laſt, when the public mind ought to have remained uninfluenced and ſuſpended,—when Mercy might have hoped that New Trials would have been granted, and new Jurors impannelled, to re-conſider the merits in both theſe Cauſes,—and when even ill-judged obſervation might have influenced opinion,—at this critical period "A Country Gentleman comes forth," and, with a graceful Bow, a thouſand Compliments, and ten thouſand *Profeſſions of his own impartiality*, humbly begs leave to controvert the Law of the Judge, and the Finding of the Jury.

Hear, now,

" Τὸν Μώσαις φίλον ἄνδρα, τὸν ἐ ΝΥΜΦΑΙΣΙΝ ἀπεχθῆ."

" * I declare to God," ſays he, " that ſince I have " read this Trial, (the Trial of the King againſt " Ruſby)—ſince I have obſerved the favoured Spirit " of Perſecution ſtalking abroad—ſcattering about " its Venom on the heads of *guiltleſs individuals*—and " poiſoning in its progreſs the very Source from which " ſpring all the Energies of Trade, I have more trem- " bled for my Country,"† &c. &c.

Would any Engliſhman think it poſſible that ſuch language could have reference to a Cauſe determined by an Engliſh Jury?

Having commented a little on " this monſtrous " and cruel uſage of men, who, whilſt they are contri- " buting to the wealth and proſperity of their Coun- " try, are ſubjected to *Perſecutions, the prominent fea-* " *ture of arbitrary Government*,"‡ he goes on:—

* " Appeal, &c. &c. page 135.

† In order that the reader may duly eſtimate the merit of this ſplendid metaphor, and that he may judge for himſelf how far removed it is from any thing to be met with in *a ſchool-boy's common-place book*, he is earneſtly requeſted to conſult LONGINUS and BURKE *On the Sublime and Beautiful.*—— " Oh, Liberty!—Oh, Virtue!—Oh, my Country!"—CATO.

‡ " Appeal," &c. page 136.

" Let us ſee whether he was guilty of the act, laying " the criminal intention out of the matter. What is " the charge? That of Regrating.—He muſt do this, " both buy and ſell: one act is not ſufficient:—but " he did not.—How, then, was he guilty of the act " laid in the indictment? He certainly *was not*."*

Indeed!—But a Jury, on their oath, and for aught I know, a Special one, under the direction of the Lord Chief Juſtice of England, on his oath, have ſaid that *he was*. One, therefore, of theſe two opinions *muſt be wrong*. Now, as I have before obſerved, for any individual to ſet up his private opinion againſt ſuch authority, is a high offence againſt the Law of England. Caſes, on ſuch a ſubject, are unneceſſary: it is a fundamental principle, co-eval with ſociety itſelf, and recognized by Nations, both civilized and ſavage.

But there is a caſe, directly in point, in the ſecond volume of the Term Reports, p. 199. The preſent Lord Chief Juſtice was not then on the bench. It is entitled, " The King againſt Watſon and Others."

The circumſtances were theſe: Watſon was an Officer of the Corporation of Yarmouth, and had indicted a Mr. Hurry for Perjury. On this indict-

* " Appeal," &c. page 137.

ment Mr. Hurry was acquitted, and he brought his action, in the Court of Common Pleas, againſt Watſon, for a malicious proſecution. The Jury gave a verdict for the Plaintiff, Mr. Hurry, with 3,000*l.* Damages, which were afterwards mitigated to 1,500*l.*

The Corporation of Yarmouth felt themſelves, and their Juriſdiction, intereſted in theſe Proſecutions; and having come to the Reſolution of indemnifying their Officer, Watſon, they voted, and entered, the following Order, in their public Books:

"That divers Suits and Proſecutions had followed the ſaid Mr. Watſon, having been ſummoned by Mr. Hurry to the Court of Requeſts, which had occaſioned a large expenſe to Mr. Watſon;—*That the Aſſembly were ſenſible that Mr. Watſon was actuated by motives of public juſtice,—of preſerving the Right of the Corporation to their Admiralty Juriſdiction,—and of ſupporting the honor and credit of the Chief Magiſtrate, and therefore they vote him the ſum of* 2,600*l.*"

The Court of King's Bench was moved for a criminal information againſt all the Members of the Corporation of Yarmouth, who were parties to the above Order, on this ground, "That it was a high contempt of the adminiſtration of public juſtice on the

face of the Order," and the Court unanimouſly granted it againſt them all; for, if that Order *was right*, the Deciſion of a Court, having competent juriſdiction, and the Verdict of a Jury, *was wrong*.

Again: * "I am well aware, that in ſupporting "this aſſertion, I muſt neceſſarily have to combat "the Law which was laid down on that occaſion. "It may be *preſumption* to diſpute the ſoundneſs of "the Law, when I conſider by whom it is laid down: "*but I do reſiſt it.*"

Here, then, this "Country Gentleman," who does not even underſtand the fundamental principles of Law, in the caſe of a common Auction; and who is of opinion that, though the very exiſtence of a whole Country is at ſtake, with the means of ſalvation within its reach, yet, that public neceſſity cannot ſo far riſe paramount to the avarice or whim of an individual, as to command the uſe, much leſs the ſacrifice of his property to that end; and whoſe abilities, therefore, by logical inference, could never have enabled him to comprehend the general principles of the common Highway Act; this Country Gentleman enters the liſts againſt the Lord Chief Juſtice of England; defies him to ſingle combat, on the point of Law; and, in imagination, beats him hollow, on the authority and application of a Burglary-Caſe, taken out of a Crown Law *Vade Mecum*.——————

* "Appeal," &c. page 138.

One hardly knows how to admire ſufficiently ſuch a Compound of vanity and folly.

* After examining, re-examining, and croſs-examining witneſſes *in nubibus*, ſilencing the Judge, and, what is infinitely more difficult, brow-beating the Counſel, he aſſerts, "that the man was in fact "found guilty, not for the offence alledged, *which it* "*was proved he did not commit*, but for many offences, "and enormous profits which, from *the ſilence* of the "Partner, he was inferred to have made in former "inſtances."

* * *

In the Court of the People.

The People
againſt
Timothy Trumpet,
alias
A Country Gentleman.

† *Counſel for Proſ.* And now, ye true, ye legitimate Sons of Freedom, we ſtand at your Tribunal; to you we appeal, and I call upon you for your Verdict. Were the Charges exhibited againſt the Court of Star-Chamber, and which cauſed its abolition, of a more opprobrious caſt, or of a fouler die, than the preſent, thus preferred againſt your envied privilege, your boaſted Palladium of Liberty?

* Appeal, 142, *et ſequent.*

† *Vide* the Prototype of this mock Trial, in the Appeal, &c. page 137 *et ſequent.*

Court. Gentlemen of the Jury, conſider your Verdict.

Cl. of Arr. Are ye agreed, Gentlemen;—how ſay ye;—is the Priſoner at the Bar Guilty, or Not Guilty, of the crime for which he ſtands indicted?

Foreman. Guilty, my Lords.

Court.—Priſoner at the bar:—You ſtand convicted, by your fellows, of having conſpired to bring into diſrepute the Judgment of the Law; and to aboliſh, as far as lay in you, that great Palladium of Engliſh Liberty, THE TRIAL BY JURY. The puniſhments for this offence, according to the uſage, which is the law of this Court, are diverſe. The higheſt which it can award, and which, to vanity, would be little ſhort of Death, is *Public Contempt.*

Sed Cur: advis: vult.

Counſel for Proſ.—There are two more indictments, my Lords, againſt the Priſoner; is it neceſſary for me to proceed in them?

Court.—It is not neceſſary to impannel a Jury. We are acting under a ſpecial Commiſſion, and there is no preſſure of buſineſs. Let them be read in Court, and we'll hear what you have to ſtate on the ſubject.

Surry, } *The* JURORS *for Our* **Lord the People**
to wit: } *upon their Oath, preſent, that* Timothy Trumpet, *late of Dirty Lane, in the pariſh of St. Mary Magdalene, in the Borough of Southwark, and county aforeſaid,* Varniſher and Dealer in Colours, *alias* "A Country Gentleman," *late of the place aforeſaid, in the pariſh aforeſaid, and County aforeſaid,* Jobber, *conſpiring, and intending to bring into diſrepute the Judgment of the Law; and to aboliſh that great Palladium of Engliſh Liberty, The Trial by Jury; with force and arms, at the pariſh aforeſaid, in the County aforeſaid, on the thirtieth day of September, in the Year One Thouſand Eight Hundred,* DID, *&c. &c. conſpire, &c. &c. and, having ſo conſpired, did publiſh &c. &c. to the tenor and effect following; that is to ſay:*

* "This Reply of the Counſel for the Proſecu-
"tion, and the Addreſs of the Judge, would form
"the ſubject of much *Obſervation and Criticiſm*;—
"but, as I have little inclination to further agitate
"my mind, or to run the riſk of violating that
"reſpect I really entertain for the actors† in this part
"of the ſcene (thereby meaning and intending
the ſcene in a Farce), "I ſhall diſmiſs it, with
"briefly obſerving, *that the opinion and language of*

* "Appeal," page 150. † *Vid. ante,* p. 29.

" *the Counſel and the Judge*, whether in reference to " the Law or Policy of the immediate ſubject, or " taking the wider range of general principles, *meet* " *my utter diſlike, and unqualified oppoſition*"—(thereby meaning and intending an oppoſition to a Court of Law; by means of certain offenſive weapons, to wit, the intellectual powers of him the ſaid Timothy Trumpet); with

the intent thereby, &c. &c. *againſt the peace of our ſaid Lord the People, their Birth-right and dignity.*

Counſel for Proſ.—On this Charge, my Lords, I agree with my learned friends on the other ſide, that the Priſoner muſt be acquitted: for, by the word " Oppoſition" I am bound to admit, that nothing more was meant than the force expreſſed in the innuendo. And, as this ſubject has wounded our whole Body in its tendereſt and moſt vulnerable points, —I mean, my Lords, in its Delicacy *(verecundiâ)* and in its Dignity—we have had a general conſultation of the Profeſſion, practiſing in this high Court, to conſider it; who, with their uſual diſintereſted ſpirit and liberality, have given it, without a fee, as their unanimous opinion, that, although the law does recognize the term " Offenſive Weapons," yet—that no ſuch offenſive weapons as thoſe ſtated in the innuendo have any legal or natural exiſtence.

Court.—You are right. Go on to the next.

The next Indictment was verbatim the ſame as the preceding; except that it ſtated, with proper innuendoes, the Overt Act, *i. e.* the Publication of the ſecond Libel, to have been as follows:

* "Can we doubt, that this Trial, and what "paſſed on that occaſion, was the Directing-poſt to "guide the Hand of Public Vengeance to a fit ob-"ject. After all I have ſaid on this extraordinary "Trial, as to *the failure of Proof againſt* RUSBY; "*after the opinion I am free to give, that the Verdict* "*was not only againſt the Weight of Evidence, but* "*in the very teeth of it; and, therefore, that he ought to* "*be acquitted, &c. &c.*"

* * *

Sed amoto quæramus ſeria ludo. If, in fact, there was this failure of proof: if the verdict was not only againſt the weight of evidence, but in the very teeth of it—this was, undoubtedly, a ſufficient ground to have induced a Court of Law, *in its diſcretion*, to have granted a new Trial.

But the queſtion now is—Could any Court of Law, exerciſing a ſound, legal, judicial diſcretion, *under all the circumſtances of this Caſe*, have granted a new Trial to Mr. RUSBY?—I aſſert, they could not; even for the vindication of injured innocence. —They might have deferred giving judgment *ſine die*;

* "Appeal," page 152.

they might have arreſted it; or, they might have fined the defendant a ſhilling; the Judge might have been impeached, and the Jury attainted; but a new Trial could not have been granted *in this caſe*, conſiſtently with that duty which the Court owed at once to the Judge and Jury, who determined the cauſe; to the proſecutor; to themſelves; and to the country.

For, mark the conſequences, if they had thought themſelves to be under this obligation by Law. After ſuch a Publication, thus deſcriptive of their conduct—in what ſituation would the Judge and Jury, who tried that cauſe, have found themſelves? With what confidence could a Proſecutor have incurred the neceſſary expenſe of a ſecond Trial, when the public mind, thus tainted, had been confirmed in its opinion, by the Award of a new Trial? How could any freſh Panel of proper Jurors have been ſtruck, when, by the exertions of a wealthy and numerous body of men, ſuch a previous ſtatement of the merits had been diſperſed, with induſtrious zeal, from the Green-ſtall to the Palace? The caſe of Mr. JOLLIFFE, when compared to this, was "Hyperion to a Satyr."

To put this in another point of view:—Suppoſe that a contrary account had been publiſhed, with the intent to influence the mind of the Public, and of the Court, *to the prejudice* of the Defendant; and

that, on coming up to receive judgment, he had ſtated this—not merely as a private wrong, but as a public offence.—I am induced to think, that the Court would probably have deferred their Judgment on the Defendant, till they had firſt ſet the author in the Pillory.

The conſequence, therefore, which I draw from the premiſes, is the following:—That, by this and other ſimilar publications, Juſtice may have been arreſted in her courſe; that one of the moſt ſacred of all human authorities has, in fact, been calumniated; and that the Axe has been laid to the root of Public Confidence.

I muſt now apologize to the Reader for the length of this Pamphlet; and I ſhall conclude it in the words of a primary, though now extinguiſhed Planet,* once revolving around that great attractive Luminary †, whoſe Sun, alſo, is ſet; and whoſe Equal, it is to be feared, will ſcarcely ever again irradiate our legal hemiſphere:

"Nothing can be of greater importance to the "welfare of the Public, than to put a ſtop to the "Animadverſions and Cenſures which are ſo fre-"quently made on Courts of Juſtice, in this coun-"try. They can be of no ſervice, and may be at-"tended with moſt miſchievous conſequences."

* Mr. Justice Buller. † Lord Mansfield.

" Caſes may happen, in which the Judge and the " Jury may be miſtaken.—When they are, THE LAW " has afforded a remedy; and the party injured is " entitled to purſue every method which the Law " allows, to correct the miſtake."

" But, when a perſon has recourſe, either by " Writings, Publications in Print, or by any other " means, to calumniate the proceedings of a Court " of Juſtice, the obvious tendency of it is, to " weaken the adminiſtration of Public Juſtice, and, " in conſequence, to ſap the very foundation of the " Conſtitution itſelf."

FINIS.

PRINTED BY J. BATESON, DENMARK-STREET.

BRITISH MUSEUM